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4 MARIO TORRES,
5 Plaintiff,
6 v.
7 SCOTT KERNAN,
8 Defendant.

9 Case No. 20-cv-03159-PJH
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13 **ORDER REOPENING CASE**
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This is a habeas corpus case filed pro se by a former state prisoner pursuant to 28 U.S.C. § 2254. On February 25, 2022, the court denied the petition on the merits, closed the case and issued a judgment. Also, on February 25, 2022, respondent filed a motion to relate a different case filed by petitioner in 2021, *Torres v. Kernan*, 21-cv-2406 YGR, to the instant case. *Torres v. Kernan*, 21-cv-2406 YGR, involves claims from the same underlying conviction as the instant case. The Ninth Circuit has held that where a second petition is filed by a pro se petitioner before the adjudication of a prior petition is complete, the new petition should be construed as a motion to amend the pending petition. *Woods v. Carey*, 525 F.3d 886, 888 (9th Cir. 2008). In a separate order, the court will relate these cases.

23 For the foregoing reasons:

- 24 1. This case is **REOPENED** and the judgment (Docket No. 20) is **VACATED**.
25 2. The petition (Docket No. 1 in *Torres v. Kernan*, 21-cv-2406 YGR) shall be
26 **DOCKETED** in this case and construed as an amended petition. In a separate order,
27 *Torres v. Kernan*, 21-cv-2406 YGR, will be closed so all filings shall be filed in this case.
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1 3. Respondent shall file a response to the claims in the amended petition as
2 outlined in the Order to Show Cause in *Torres v. Kernan*, 21-cv-2406 YGR.

3 **IT IS SO ORDERED.**

4 Dated: March 1, 2022

5
6 /s/ Phyllis J. Hamilton
7 PHYLLIS J. HAMILTON
8 United States District Judge

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United States District Court
Northern District of California